



WILTSHIRE  
& GRANNIS LLP

September 23, 2010

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

*Re: Notice of Inquiry, Structure and Practices of the Video Relay Service Program,  
CG Docket No. 10-51*

Dear Ms. Dortch:

On September 22, 2010, Michael Maddix, Director of Government and Regulatory Affairs for Sorenson Communications, Inc. (“Sorenson”), and Christopher Wright and the undersigned of Wiltshire & Grannis LLP, along with Toni Cook Bush of Skadden Arps, met with Office of Strategic Planning and Policy Analysis Chief Paul de Sa, Chief Economist Jonathan Baker, Consumer and Governmental Affairs Bureau (“CGB”) Chief Joel Gurin, CGB Deputy Chief Karen Peltz Strauss, Greg Hlibok (CGB), Andrew Multz (CGB), and Diane Mason (CGB), Nick Alexander (Wireline Competition Bureau), and Diane Griffin Holland (Office of the General Counsel) to discuss the Notice of Inquiry in the docket captioned above. On a broad level, Sorenson commended the Commission for undertaking a fresh look at the rates and rules applicable to Video Relay Service (“VRS”) and underscored the need to achieve service for all deaf Americans that is functionally equivalent to the communications service hearing end users receive, and to do so efficiently and in a manner that continues to promote, and does not discourage or impair, technological innovation. Sorenson also noted that, unlike many other industries that the Commission oversees, VRS has a relatively large number of competitors – a result of the fact that the barriers to entry in the VRS industry are low and that provision of VRS is labor intensive rather than capital intensive.

**I. Rates**

With respect to rates, Sorenson urged the Commission to adopt a single, multi-year rate. The record reflects wide support for a multi-year price cap, and also a broad consensus that the Commission should not attempt to set rates using any form of rate-of-return regulation. The Commission has been moving away from rate-of-return regulation for twenty years, and most recently the National Broadband Plan proposed to eliminate rate-of-return regulation for small

incumbent LECs, which is the only setting in which the Commission still uses rate-of-return regulation.

We pointed out that the record continues to lack any empirical or analytical support for the use of multiple rate tiers, rather than a single rate tier. Economies of scale – the principal justification for the adoption of tiers – do not exist to an appreciable degree in the VRS industry. While some commenters contend that there are economies of scale because of the cost of securing interpreting center facility space or managers, these parties appear to be confusing “fixed” costs with costs that are lumpy but variable over time.<sup>1</sup> Indeed, many of the commenters who ostensibly support a tiered approach based on purported economies of scale recognize (inconsistently) in other portions of their comments that VRS is unusually labor-intensive and that the labor costs are purely variable. Further supporting the lack of significant economies of scale is the fact that Sorenson’s own interpreting centers range from 6 to 40 seats, averaging approximately 15. This is simply not an industry with large production centers.

Nor does NECA’s data support a conclusion that there are significant economies of scale. It must be remembered that there are only 8 eligible providers of VRS. NECA’s analysis simply shows correlation rather than causation: the fact that smaller providers have higher costs does not prove that they are less efficient because they are small, rather than less efficient for other reasons.

Sorenson believes that a reverse auction would serve the goals underlying the ADA, as it would encourage innovation while allowing multiple bidders to prevail without allocating a specific share to any of the winners. Sorenson noted that its competitors generally misconstrued the reverse auction arguments in their comments, berating a system that would produce a single winner. But that is a straw-man argument; Sorenson has not proposed a single-winner auction in which the lowest bidder’s rate would prevail.

## **II. Equipment**

With respect to equipment, Sorenson urged the FCC to avoid imposing additional and unnecessary regulations that would discourage innovation and technological advancement, and not forcibly to separate the provision of equipment from the provision of VRS. Providers such as Sorenson developed and provided VRS equipment because the equipment then available was not user-friendly and did not support a quality VRS. The result was overwhelmingly beneficial to deaf consumers, and substantially improved both access to and the usability of VRS. In addition, the FCC has already established sensible and limited interoperability requirements for VRS equipment, including obligations to: connect automatically with a new default provider following a port; deliver routing information to the new default provider after the port is complete; accept a URI or IP address that the new provider uses for call setup purposes; and allow a user to dial a number that the VRS equipment automatically forwards to the new default provider (to ensure that a user can complete a call without finger-spelling the number).

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<sup>1</sup> See Comments of CSDVRS, LLC, CG Docket No. 10-51 at 38 (filed August 18, 2010).

In contrast to these limited requirements, Sorenson noted that the Commission has correctly rejected the idea that a provider must continue supporting enhanced features after a customer switches to a new default provider. In particular, the FCC declined to adopt a proposed rule requiring the VRS equipment provider to ensure that enhanced features can be used after a consumer ports to a new provider. The FCC expressly rejected that proposal because it would disserve consumers' interests, explaining that "[p]roviders may offer such features on a competitive basis, which will encourage innovation and competition."<sup>2</sup> In this regard, Sorenson noted that the FCC has recognized that all VRS equipment-related obligations should fall on the current default provider, even if it is not the entity that supplied the VRS equipment. For instance, the FCC held in the *June 2008 Numbering Order* (and reaffirmed in the *December 2008 Numbering Order*) that a customer's default provider must obtain routing information for the customer's VRS, even if the default provider is not the entity that supplied the VRS equipment.<sup>3</sup>

While many providers have balked at this requirement, Sorenson agrees with the FCC that the default provider logically must bear responsibility for its service and the operation of its customers' VRS equipment. Requiring the default provider to bear responsibility for the VRS equipment (and other aspects of service) makes sense. The alternative – i.e., having multiple entities responsible for discrete aspects of a single service – would lead to an administrative nightmare. Therefore, Sorenson has taken the lead in developing and revising standards to allow all providers to adhere to this requirement, but its competitors have been less diligent about adopting them.

In that connection, Sorenson opposes CSDVRS's pending petition for rulemaking for these same reasons.<sup>4</sup> In its petition, CSDVRS requests that the FCC adopt a rule requiring VRS providers to continue supporting enhanced features on VRS equipment they have supplied even after users port to a new default provider. The Commission should reject the petition in the context of the NOI proceeding for the same reasons it rejected a comparable proposal two years ago. As the Commission has previously concluded, the rule that CSDVRS proposes would discourage competition and innovation, to the detriment of VRS consumers.<sup>5</sup> Requiring providers to continue to support services even after users port away would eliminate the competitive incentive to provide enhanced features in the first place. Indeed, CSDVRS's

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<sup>2</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd. 791, 820 ¶ 63 (2008) ("*December 2008 Numbering Order*").

<sup>3</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, 23 FCC Rcd. 11,591, 11,615 ¶ 60 (2008) ("*June 2008 Numbering Order*").

<sup>4</sup> See CSDVRS Petition for Rulemaking on CPE Support and Portability, CG Docket No. 10-51 (filed August 9, 2010).

<sup>5</sup> See *December 2008 Numbering Order* ¶ 63.

proposed rules directly eliminate competition, as they would effectively enable every VRS provider to offer customers every enhanced feature that other competitors provide.<sup>6</sup>

### **III. Marketing and Outreach**

With respect to marketing and outreach, Sorenson noted that Section 225 is a universal service statute and making VRS available to ASL users who are currently unserved should be a key goal in establishing new rules and rates. Sorenson stated that whatever outreach efforts the FCC and community organizations might make, providers should play an important role too.

### **IV. 911**

Sorenson has been a leader in the provision of 911 service in which a third party (its interpreters) receives video in an emergency, and provides extensive training to all of its VRS interpreters on how to handle VRS 911 calls. In fact, Sorenson believes that some of its experience in dealing with 911 involving video will be helpful to PSAPs as they transition to Next Generation 911 services. Sorenson believes that each VRS provider should continue to provide 911 service and to train its interpreters accordingly. The volume of 911 calls is simply too low to make it efficient for a separate entity to staff a centralized 911 call center, and such a center would likely lack the capacity to handle peak surges during a widespread emergency.

Respectfully submitted,

/s/  
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<sup>6</sup> 47 C.F.R. § 64.604(b)(5) provides that “[n]o regulation set forth in [the Subpart devoted to TRS regulations] is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to persons with disabilities,” but that’s exactly what CSDVRS’s proposed rule would do.